BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
U. S. BLOCKBOARD CORPORATION)

For Appellant: Charles Y. Boeggeman
Attorney at Law

For Respondent: Crawford H. Thomas
Chief Counsel

Lawrence C. Counts
Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to section 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of U. S. Blockboard Corporation for refund of franchise tax in the amount of $427.75 for the taxable year 1965.

The primary question presented is whether U. S. Blockboard Corporation was effectively dissolved on June 24, 1965, for purposes of computing its franchise tax liability for the taxable year 1965.

U. S. Blockboard Corporation (hereafter "appellant") was incorporated in 1956 for the purpose of manufacturing and selling wood products. On July 23, 1963, all of its stock was acquired by Boeggeman Lumber Company.

On June 15, 1965, appellant filed its franchise tax return for its taxable year 1965, income year 1964, and paid the tax reportedly due for the full year. Thereafter, on June 24, 1965, appellant obtained a tax clearance certificate from respondent and, on the same day, appellant filed a "Certificate of Election to Wind Up and Dissolve" with the office of the Secretary of State of California.

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On June 29, 1965, appellant filed a claim for refund of half the amount previously paid. As a basis for that claim appellant stated that it had been completely liquidated on June 14, 1965, when all of its assets and liabilities were transferred to its parent corporation, Boeggeman Lumber Company. On January 14, 1966, appellant filed a "Certificate of Winding Up and Dissolution" with the Secretary of State. That document indicated that appellant had been completely wound up, that its debts and taxes had been paid, and that its assets had been distributed.

Respondent denied appellant's claim for refund of one-half the franchise tax paid for 1965 on the ground that "the corporation did not complete dissolution proceedings in the office of the Secretary of State during the taxable year ended December 31, 1965." This appeal was taken from that determination.

Section 23332 of the Revenue and Taxation Code provides that if a corporation dissolves during a taxable year it shall pay a tax only for the months of the taxable year which precede the effective date of dissolution. The "effective date of dissolution of a corporation" is the date on which the certificate of winding up and dissolution is filed in the office of the Secretary of State. (Rev, & Tax. Code, § 23332,)

Appellant argues that its filing of a certificate of election to wind up and dissolve with the Secretary of State constituted compliance with the above stated portion of section 23331, thereby establishing June 24, 1965 as the effective date of appellant's dissolution. In support of this contention appellant relies on the case of Bank of Alameda County v. McColgan, 69 Cal. App. 2d 464 [159 P.2d 31], which held that under section 13(k)(1) of the Bank and Corporation Franchise Tax Act (the predecessor of section 23332 of the Revenue and Taxation Code) the effective date of dissolution of a corporation was the date on which it ceased to do business, distributed its assets to its shareholders, and filed a certificate of election to dissolve.

We had occasion to consider this precise question in Appeal of Mount Shasta Milling Co., Cal. St. Bd. of Equal., Dec. 13, 1960. We there concluded that the Bank of Alameda County case was not controlling as to taxable years subsequent to the enactment of section 23331 of the Revenue and Taxation Code, which specifically defines "effective date of dissolution." That statutory provision is controlling in the instant case.

The Corporations Code makes a clear distinction between a certificate of election to wind up and dissolve (§§ 1&00-4606) and a certificate of winding up and dissolution (§§ 5200 and 5201) which signifies the end of corporate existence. In light of these unambiguous statutory provisions we find no escape from the conclusion that the effective date of appellant's dissolution was January 14, 1966, the date on which it filed a certificate of winding up and dissolution with -the Secretary of State,

The second question presented by this appeal arises out of appellant's contention that respondent is estopped from denying that appellant was effectively dissolved on June 24, 1965. Appellant alleges that at the time it filed its certificate of election to wind up end dissolve it was advised by representatives of both the Secretary of State's office and respondent that all it -needed to file in order to obtain a franchise tax refund was a refund claim with respondent and a certificate of election to wind up and dissolve with the Secretary of State. Appellant contends that in reliance on that advice it did not file the final certificate of winding up and dissolution until. January 14, 1966, although it would have been a simple matter for it to do so earlier if it had thought such filing necessary.

As a general rule estoppel will not be invoked against the government or its agencies except in rare and unusual circumstances. (California Cigarette Concessions, Inc. v. City of Los Angeles, 53 Cal. 2d 865 [3 Cal. Rptr. 675, 350 P.2d 715]; U. S. Fidelity & Guaranty Co. v. State Board of Equalization, 47 Cal, 2d 384 [303 P .2d 1034].) Equitable estoppel will run against the government where justice and right require it, (Farrell v. County of Placer, 23 Cal. 2d 624 [145 P. 2d 570].) Estoppel, however, is an affirmative defense and the burden is on the party asserting it to establish the facts necessary to support it, (Hull v. Commissioner, 87 F. 2d 260; Joyce v. Gentsch, 141 F.2d 891.)

The only evidence offered by appellant to substantiate its allegations is an unsigned affidavit supposedly made by appellant's certified public accountant in which the latter stated that he had contacted the Secretary of State's office by telephone and had been told by some unidentified person or persons that the certificate of winding up and dissolution did not need to be filed in order to obtain a franchise tax refund. No statement is made in the "affidavit" of any similar advice having been received from any representative of respondent although mention is made of a call to respondent's office. In view of clear statutory provisions and the information before us, we do not believe that appellant has proven a case justifying application of the doctrine of estoppel against respondent.

The above conclusions make it unnecessary for us to consider a third issue raised by respondent concerning whether or not the dissolution of appellant was pursuant to a reorganization, consolidation or merger, as defined in section 23251 of the Revenue and Taxation Code,

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of U. S. Blockboard Corporation for refund of franchise tax in the amount of $427.75 for the taxable year 1965 be and the same is hereby sustained.

Done at Sacramento, California, this 7th day of July, 1967, by the State Board of Equalization,

Paul R. Leake, Chairman

John W. Lynch, Member

Richard Nevins, Member

_____, Member

_____, Member

ATTEST: _____, Secretary